

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LILLE V. EPTING THOMAS and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Beverly Hills, CA

*Docket No. 00-2832; Submitted on the Record;
Issued August 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition causally related to compensable factors of her employment.

On December 12, 1998 appellant, then a 48-year-old window clerk and timekeeper, filed a claim for recurrent depression. She indicated that she had been treated for depression after a five-day suspension but increasing problems on the job had required more therapy and increased medication until she was given time off. Appellant stopped working on December 1, 1998.

In an accompanying statement, appellant indicated that on August 12, 1996 she received a fixed credit of stamp stock from her supervisor which was a change from prior procedures for her position. She stated that she became very nervous about the responsibility for the stamp stock. Appellant received the key for her stamp drawer but was never given a key to the cage in which the stamp stock was kept, even though her supervisor repeatedly promised to give her a key. She noted that on August 14, 1996, she was informed that she had erroneously mailed a customer a \$23.00 roll of stamps instead of a \$32.00 roll of stamps. Appellant expressed concern that she was instructed to make the exchange instead of following the usual procedure of putting a note in the drawer and addressing the matter after an audit. She indicated that on August 27, 1996, she made another error in a stamp order when she did not include two priority mail stamps in the order.

Appellant indicated that on September 16, 1996, four coworkers called in sick which created more duties for her, including helping two employees on rehabilitation, throwing mail, working notices that had been left, answering the telephone and answering questions from supervisors. On October 7, 1996 she was assigned to help throw mail. Appellant indicated that the lines at the employing establishment became long because two coworkers were not in and many customers were picking up vacation mail. She noted that the customers complained but her supervisor came in at 10:30 a.m., went to her office and did not come out until 15 minutes later when customers insisted on talking to a supervisor. Appellant related that she fell asleep on

her lunch hour and returned late from lunch. Her supervisor required her to complete a leave slip.

Appellant reported that on October 10, 1996 she slipped on a pencil on the work floor and fell. She stated that she was not taken to the employing establishment clinic but had to be helped by a coworker. Appellant indicated that she came in the next day to complete the appropriate forms for her injury but her supervisor refused to complete the form because she was not at work the day before when appellant sustained her injury. She stated that it took two months for the other supervisor to complete the form. Appellant indicated that despite her injury, her supervisor did not offer to take her to the doctor or give her duties in which she would not be required to stand.

Appellant noted other incidents at work, which she felt affected her condition. She indicated that she was required to see employing establishment physicians for two weeks until she received authorization from the Office of Workers' Compensation Programs to receive an orthopedic evaluation. Appellant indicated that on one occasion her supervisor verbally reprimanded her for wearing a smock on the grounds that the smock was not an appropriate uniform. She related that on November 26, 1996, the day after Thanksgiving, the employing establishment was short staffed and the customers were restless, engaging in verbal abuse. Appellant noted that her supervisor left her a note to work the next day. She indicated that in December 1996 her supervisor returned and disapproved a request for annual leave that had been submitted in July. Appellant stated that in February 1997 her supervisor attempted to show her how to deposit employing establishment funds in the back but she was unable to grasp the total concept and had an anxiety attack. She noted that on one occasion she opened the safe at the employing establishment and found registered mail that had not be delivered the previous Saturday. Appellant became nervous, believing that the situation was a trap. She prepared a written report and reported the matter to a supervisor who dismissed the written report and considered the matter as not serious.

Appellant reported that in September 1997 she held a new position as a timekeeper but did not receive adequate training for the position. She indicated that in 1998 her supervisor challenged her on the payment of employees on holidays. It was discovered that appellant had overpaid some workers and omitted payment to others. She noted that another timekeeper was removed from her position. Appellant indicated that many of the reports concerning the performance of the other timekeeper were requested from her. She stated that she had to keep quiet and work next to the timekeeper everyday. When the timekeeper was informed of her removal, she asked how long appellant had known about the proposed removal. Appellant began to cry and could not stop.

Appellant indicated that on two occasions, arguments between her supervisor and coworkers occurred in front of her desk. She was asked to write statements on her view of the incidents, which she found stressful.

Appellant stated that from May to July 1998 she printed out reports and answered questions her supervisor had about employees as it pertained to timekeeping. She indicated that she was not allowed to question any instruction she was given nor allowed to alert an employee if an inquiry had been made about him or her. Appellant noted that she had special instructions

for when a union representative requested information and different instructions for other inquirers.

Appellant indicated that she was requested to give a class to supervisors on how timekeeping matters were handled. She stated that she was given fewer than 10 minutes to prepare and teach her class. Appellant was instructed to investigate documents from another employing establishment concerning two employees. She followed her supervisor's instructions but often did not know who to call or what questions to ask. Appellant indicated that she requested changes in her schedule for personal reasons but was "given the third degree."

Appellant stated that the final stressful incident was moving the timekeeping office from the first floor of the employing establishment to the second floor. She complained that she had no moving schedule and had to pack and unpack the accounting office without instructions. Appellant indicated that the room into which the accounting/timekeeping office moved had only two electrical outlets for the three computers, copying machine and facsimile machine that the employing establishment had. She claimed that her supervisor was not present to give guidance so she had to make decisions in her absence, which the supervisor then criticized.

Appellant indicated that on December 1, 1998 she was given a demand notice for irregularities in her fixed credit in 1996. On that date, she came to work and found a facsimile message in the fax machine that was her removal notice. She became very upset and had an anxiety attack. Appellant stated that she also became trapped in an elevator that day.

Appellant submitted medical notes progress reports concerning medical treatment. In three notes from 1994, Dr. Donald Oliveau, a Board-certified psychiatrist, indicated that appellant was responding to treatment for depression. Appellant also submitted office notes from counseling sessions she participated in from December 17, 1996 to December 2, 1998.

In a February 4, 1999 statement, Rachel Tighe, appellant's supervisor, responded to appellant's statement. She stated that appellant, as a window clerk, was given stock as were all window clerks. She indicated that she could not recall the incidents involving errors in filling orders for stamps but commented that she always followed proper procedures in which corrections were made. In regard to the September 16, 1996 incident, Ms. Tighe stated that two clerks, not four, called in sick. In regard to the October 7, 1996 incident, Ms. Tighe indicated that appellant was not instructed to do anything that other clerks were not instructed to do. She commented that appellant was instructed not to wear a smock because it was not part of the uniform for a window clerk. Ms. Tighe stated that in the November 29, 1996 incident, appellant was mandated to work the next day. She noted, in response to appellant's complaint regarding the leave slip, that appellant was off during the week that she had requested leave. Ms. Tighe indicated that she had instructed appellant on how to make a bank deposit and expected appellant could perform the task because she was a trained window clerk. She noted that when appellant became a timekeeper, she was instructed on the sensitive matter of working with a coworker who was later removed and was told that everything she worked with in the position was strictly confidential. Ms. Tighe noted that appellant was requested to submit a statement involving an argument between Ms. Tighe and an employee. Appellant responded that she heard nothing. Ms. Tighe stated that appellant was asked to give a class to supervisors on timekeeping who had

missed a class given by Ms. Tighe. She began the class and appellant was supposed to finish up but was unable to do so due to extreme nervousness.

In regard to appellant's requests for changes in her schedule, Ms. Tighe stated that she made inquiries only to make sure appellant's job was done. She indicated that appellant was well aware of the impending move and did not have to pack up the entire office by herself but volunteered to do. Ms. Tighe stated that while much material arose from consolidating three offices into the space of one, everything was condensed, the essential equipment was placed in the new office and the surplus equipment was put in storage. She indicated that appellant was not in charge of the move and was not criticized for her actions. Ms. Tighe stated appellant was thanked repeatedly for her help in making the move. She stated that appellant was aware that she would receive a letter of removal. Ms. Tighe commented that it was unfortunate that appellant found out about the letter of removal by seeing it in the fax machine. She stated that appellant was given the letter of demand and placed on administrative leave later that day. Ms. Tighe indicated appellant never reported that she became stuck in an elevator.

In response, appellant indicated that she was nervous in receiving over \$11,000.00 in postal stamps and products. She commented that Ms. Tighe's rushing did not help her. In regard to the leave slip in December 1996, appellant stated that Ms. Tighe had the leave slip for five months and family plans had already been made for the time off. She indicated that the union had a deadline for returning leave slips and that deadline had long since passed. Appellant complained that she had not been well trained as a timekeeper and she often received instructions from Ms. Tighe, some of which were inaccurate. She noted that she received instructions from three people on who to perform timekeeping duties, which occasionally conflicted.

Appellant also submitted copies of Office notes from Dr. David Clark, a psychologist. In a November 30, 1998 note, Dr. Clark indicated that he had completed a partial assessment of appellant and provided information on depression. He reported that appellant called on December 1, 1998 to report that she had been escorted from work and placed on disciplinary administrative leave related to an accounting issue. He noted in a December 11, 1998 note that appellant gave a history of the recent events that lead up to her being removed from work and described the actions taken thereafter in an effort to reverse the disciplinary action. Dr. Clark diagnosed major depressive disorder. He indicated that he discussed with appellant various efforts to cope with her depression. In a December 29, 1998 note, Dr. Clark reported that the third session with appellant focused on activities which had assisted in reducing her depressive symptoms. He also noted a discussion on appellant's medication. In a January 13, 1999 office note, Dr. Clark related that appellant indicated her supervisor had broke confidentiality and talked with coworkers on the reasons for appellant's removal from work. He indicated that there was a discussion on how this action affected appellant's mood.

In a September 22, 1999 decision, the Office found that appellant had not met her burden of proof in relating her emotional condition to compensable factors of her employment. The Office found that the following incidents occurred in the performance of duty: the error in giving a \$23.00 roll of stamps; the occasions on which appellant had to face dissatisfied customers; the traumatic injury of October 10, 1996; the difficulty in comprehending instructions in making a bank deposit; opening the safe and finding undelivered registered mail; the requirement to keep interactions as timekeeper confidential particularly when another timekeeper

was removed; witnesses confrontations between management and coworkers; the preparation and presenting timekeeping information in a training of supervisors; the instruction to check documents relating to two employees; and the preparation and moving of the office. The Office stated that several factors were not compensable factors of employment, including the failure to receive a key to the cage, assignment of duties, the supervisor's failure to take her to the doctor on October 11, 1996, the failure to complete a claim form for two months, the requirement that appellant not wear a smock at work, the denial of leave, the requirement to work on November 30, 1996, the requests for changes of schedule, appellant's extra work in moving the office at the employing establishment and appellant's finding the letter of removal in the facsimile machine. The Office did not accept that appellant was verbally abused on November 29, 1998, that she had problems in receiving training as a timekeeper, that she was not allowed to ask questions as a timekeeper, that she was criticized by her supervisor after the move of the office or that she was stuck in an elevator.

Appellant requested a hearing before an Office hearing representative, which was conducted on March 22, 2000. At the hearing, appellant repeated her description of the factors which she believed caused her condition. She testified that she was suspended in 1994 for allegedly throwing a book at a customer. Appellant stated that the customer had placed the book on a counter and the counter fell. She indicated that she then began to receive treatment for depression. Appellant added that on two occasions she was physically assaulted by postal customers. She indicated that she was removed from the employing establishment because an audit showed that her account had been short \$700.00.

In a response to the testimony at the hearing, appellant's supervisor, stated that appellant was removed from the employing establishment because she had prepared a postal money order for \$700.00 that was made out to herself and then reported the money order as voided.

In a June 14, 2000 decision, the hearing representative found that, although compensable work factors had been identified, appellant had not met her burden of proof just by identifying such factors. The hearing representative concluded that appellant had not submitted rationalized medical evidence relating her emotional condition to the compensable factors of employment.

The Board finds that appellant has not met her burden of proof in establishing that her emotional condition was causally related to factors of her employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act.¹ Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job

¹ 5 U.S.C. §§ 8101-8193.

do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.²

When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.³ In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁴

The Office properly found that appellant had some compensable factors of employment. The error involving the stamp order, the occasions when she was faced with disgruntled customers, the difficulty in completing the bank deposit, the effort to provide training to supervisors, her work in moving the timekeeping office and her reaction to the confidentiality requirement of the timekeeping position were all part of her assigned duties and therefore compensable factors of employment. Similarly, the requirement to write statements as a witness to arguments between a supervisor and coworkers was a specially assigned duty that would be a compensable factor of employment.

The Office also properly concluded that some of the incidents described by appellant were not compensable factors of employment. The issuance of keys to the cage at the employing establishment, matters relating to approval or disapproval of leave or the change of schedules, and the issue of whether a smock was an appropriate uniform are administrative matters within the discretion of appellant's supervisors. These factors, therefore, do not fall within the category of compensable factors of employment unless it can be shown that the actions of the supervisors were abusive or exercised in error. Appellant alleged that her supervisor, in taking five months to respond to a request for leave, exceeded required deadlines for a supervisor's response to such a request. She, however, has not submitted the written language that set forth the time requirements for a supervisor to respond to a request for leave. Also, appellant's reaction to the suspension in 1994 and to her removal on December 1, 1998 are not within the performance of duty because these actions are disciplinary actions and, as such, are administrative actions. There is no evidence that these actions were erroneous or abusive.

Appellant made several other allegations that have not been substantiated. She claimed that she was stuck in an elevator at the employing establishment and that she was struck by postal customers. Appellant has not submitted any supporting evidence, particularly statements from eyewitnesses who could substantiate her allegations.

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990) *reaff'd on recon.*, 42 ECAB 566 (1991).

While appellant established that some compensable factors of employment existed in her case, she has not established that these factors were causally related to her emotional condition. To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁵ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁸ must be one of reasonable medical certainty⁹ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

The only medical evidence submitted by appellant were the reports of Dr. Oliveau in 1994 and Dr. Davis in 1998 and 1999. Both physicians diagnosed depression. However, neither physician gave an opinion on whether appellant's emotional condition was causally related to the compensable factors of employment. Neither physician attempted to explain how appellant's depression was causally related to her employment. Appellant, therefore, has not submitted the rationalized medical evidence necessary to meet her burden of proof.

⁵ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁶ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁷ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁸ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁹ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁰ See *William E. Enright*, 31 ECAB 426, 430 (1980).

The June 14, 2000 and September 22, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member